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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 579.

C. L. ADDINGTON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED AUGUST 11, 1896.

(18,648.)

In 96 U. S., 528, the court by Mr. Chief Justice Waite said:

> "It is not for us to determine in this case whether the power [to regulate the use of the property attached] has been wisely or discreetly exercised. That duty rests elsewhere. We must assume that it has not."

And in 120 U. S., page 29, the court by Mr. Justice Field said:

> "The nature and extent of such legislation will necessarily depend upon the judgment of the legislature as to the evil to be remedied by society."

The cases cited by appellant as to the non-liability of a railway company for leaving stocks which not required for hence, are not pertinent, as is clearly pointed out in the opinion in this case in 11 L. 207, Bell vs. Johnson.

In some instances legislation has been attempted to be upheld under the guise of the police power which it was apparent that the attempted use of such power was a mere subterfuge.

Scott, 118 U. S., 307, et seqq. and especially 373-4
York Wine Co. v. Hopkins.
2 Am. St. Rep. 589, 107 N. C. 472 Statton v. Yopp.

Many of the cases cited by appellant are of the above class; the others are not applicable to the question at bar.

It is respectfully submitted that this cause should be affirmed.

PARLEY L. WILLIAMS,
Attorney for Appellant.

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FILED AUGUST 11, 1896.

(16358.)

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a Be it remembered that at a regular term of the honorable circuit court of the United States for the eastern district of Texas, begun and held at the court-house in the city of Paris, in said district, on Monday, the sixth day of April, A. D. 1896, and which said term adjourned on Friday, the 10th day of July, A. D. 1896, the following cause came on for trial, to wit:

THE UNITED STATES
v.
C. L. ADDINGTON ET AL. } No. 876.

1 November term, 1895.

Be it remembered that on this Monday, the 18th day of November, A. D. 1895, there was begun and held at the court-house in the city of Paris, Texas, a regular term of the honorable the circuit court of the United States for the eastern district of Texas, in the fifth circuit.

Present and presiding, Hon. David E. Bryant, judge; also present, S. Taliaferro, esq., U. S. attorney; John B. Dailey, esq., asst. U. S. attorney; J. S. Williams, U. S. marshal, and C. Dart, clerk, by his deputy, H. H. Kirkpatrick, when the following proceedings were had, to wit:

WEDNESDAY, *November 27th, 1895.*

Court met pursuant to adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, esq., U. S. attorney; John B. Dailey, esq., asst. U. S. attorney; J. S. Williams, U. S. marshal, and C. Dart, clerk, by H. H. Kirkpatrick, deputy.

This day came the grand jury, and a quorum being present, presented in open court the following bills of indictment, to wit:

THE UNITED STATES
vs.
C. L. ADDINGTON AND T. D. BUCHANNON. } Charge, murder.

2 Each of which bills of indictment the clerk is ordered to file and enter upon the proper docket.

In the name and by the authority of the United States of America. In the circuit court of the United States of America for the eastern district of Texas, in the fifth circuit.

At a stated term of the circuit court of the United States of America for the eastern district of Texas, in the fifth circuit, begun and held at Paris, Texas, within and for the district and circuit aforesaid, on the third Monday, the same being the eighteenth day of November, in the year of our Lord eighteen hundred and ninety-five, and continued by adjournment to and including the 27th day of November, in the year of our Lord eighteen hundred and ninety-five.

EASTERN DISTRICT OF TEXAS, *set.:*

The grand jurors of the United States of America, duly elected, impaneled, tried, sworn, and charged to inquire into and due presentment

make of offenses against the laws of the United States of America, in and for the district and circuit aforesaid, on their oaths in said court present. That one C. L. Addington, and T. B. Buchannon, late of the Choctaw Nation, Red River County, Indian Territory, in the district and circuit aforesaid, on the 28th day of June, in the year of our Lord eighteen hundred and ninety-five, in Red River County, in the Choctaw Nation in the Indian Territory, the same being annexed to and constituting a part of the said fifth circuit, and annexed to and constituting a part of the eastern district of Texas for judicial purposes, and being within the jurisdiction of this court and under the exclusive jurisdiction of the United States, did unlawfully, fraudulently, and feloniously

3 and with their malice aforethought and with the malice aforethought of each of them and with a certain deadly weapon, to wit, a certain pistol then and there held, make an assault in and upon the body of one Oscar Hodges with said pistol held as aforesaid, said pistol being then and there loaded and charged with gunpowder and leaden balls, then and there held and used as aforesaid. The said C. L. Addington and T. D. Buchannon did then and there shoot off and discharge the contents of said pistol at, in, and upon the body of said Oscar Hodges, inflicting thereon certain mortal wounds, of which mortal wounds the said Oscar Hodges did languish, and languishing did then and there instantly die.

And the said grand jurors aforesaid, upon their oaths aforesaid, do say that upon the day aforesaid, and the place aforesaid, with said deadly weapon aforesaid, used as aforesaid, and in the manner aforesaid, the said C. L. Addington and T. D. Buchannon did unlawfully, feloniously, and with their malice aforethought and with the malice aforethought of each of them, kill and murder the said Oscar Hodges. The said Oscar Hodges being then and there a white person, and not an Indian, nor a citizen of the Indian Territory, nor a citizen of any Indian nation or tribe, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

A. CATE,
Foreman of the Grand Jury.

JOHN B. DAILEY,
Asst. U. S. Attorney, Eastern District of Texas.

4 The following endorsements appear on back of aforewritten indictment: No. 876. The United States vs. C. L. Addington, T. D. Buchannon. Offense: Murder. A true bill. A. Cate, foreman of the grand jury. U. S. witnesses: G. W. Barr, Cerro Gordo, Ark.; Baker Dillahunter, Cerro Gordo, Ark.; Nute Walker, Shawneetown, I. T.; Mrs. O. E. Hodges, Shawnee Town, I. T.; H. C. H. Harris, Harris, I. T.; Mrs. Hamilton, Harris, I. T.; J. O. Cooper, Cerro Gordo, I. T.; D. S. Cooper, Cerro Gordo, I. T.; A. S. Parker, Cerro Gordo, Ark.; G. A. Strawn, Cerro Gordo, Ark.; J. D. Algood, Cerro Gordo, Ark.; Mary or Maggie C. Hodges, Cero Gordo, Ark.; Robt. A. Orr, Cero Gordo, Ark.; Mr. Fancher, Cero Gordo, Ark.; Mr. Darden, Cero Gordo, Ark.; May McGarity, Horatio, Ark.

We, the jury, find the defendant C. L. Addington guilty of murder in the Indian Territory as charged in this indictment, and we find T. D. Buchannon not guilty as charged in this indictment.

June 1st, 1896.

RUFFIN SANSING, *Foreman.*

5 Be it remembered that on the first Monday, the same being the sixth day of April, A. D. 1896, there was begun and held in the city of Paris, Texas, at the court rooms of said court, a regular term of the circuit court of the United States for the eastern district of Texas, in the fifth circuit. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, U. S. attorney; H. B. Birmingham, asst. U. S. attorney; John B. Dailey, asst. U. S. attorney; J. S. Williams, U. S. marshal, and C. Dart, clerk, when the following proceedings were had, to wit:

THURSDAY, *May 28th, 1896.*

Court was opened at 9 a. m. as per last adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, U. S. attorney; H. B. Birmingham, asst. U. S. attorney; John B. Dailey, asst. U. S. attorney; J. S. Williams, U. S. marshal, by R. Herz, deputy, and C. Dart, clerk, by his deputy, H. H. Kirkpatrick.

In the circuit court of the United States for the eastern district of Texas.

Be it remembered that at a regular term of the circuit court of the United States for the eastern district of Texas, held in and for the district aforesaid at the court rooms of said court, in the city of Paris, on Thursday, the 28th day of May, 1896, present, the Honorable D. E. Brant, judge, presiding, the following, among other proceedings were had, to wit:

6 Circuit court. Criminal docket.

THE UNITED STATES
vs.
C. L. ADDINGTON AND T. D. BUCHANNON. } No. 876.

This cause coming on this day to be heard, came the United States, by her attorney, and announced ready for trial, and the defendants, C. L. Addington and T. D. Buchannon, each in his own proper person and by attorney, appeared in open court and announced ready for trial, and the said defendants being arraigned, each separately for himself, plead not guilty; and thereupon came a jury of twelve good and lawful men, to wit: J. E. Watson, Volney Baker, H. H. Liles, R. Sansing, B. R. Shafer, B. J. Mattison, C. P. Worthey, W. M. Rone, D. W. Russell, A. L. Dickey, W. L. Smith, and J. J. Hammond, each and all of whom were in open court, face to face with the defendants, and each of them duly examined, accepted, tried, impaneled, and sworn, as required by law, to try this cause, each of the defendants being accorded the privilege of participating in the examination as to the competency and qualification of each juror, and of peremptorily challenging not to exceed twenty of the list of

jurors; and the jury having heard the pleas of the defendants and part of the evidence, and said evidence not being concluded at the hour of adjournment, the jury were duly continued and instructed by the court, and placed in charge of a duly appointed and sworn bailiff for the night; and further hearing of this cause was postponed until to-morrow.

7 FRIDAY, *May 29th, 1896.*

Court was opened at 9 a. m., as per last adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, U. S. attorney; H. B. Birmingham, asst. U. S. atty.; John B. Dailey, asst. U. S. atty.; J. S. Williams, U. S. marshal, by his deputy, R. Herz, and C. Dart, clerk, by his deputy, H. H. Kirkpatrick.

Circuit court. Criminal docket.

THE UNITED STATES
vs. } No. 876.
C. L. ADDINGTON & T. D. BUCHANNON.

This cause coming on this day to be further heard, came the United States, by her attorney, and defendants C. L. Addington and T. D. Buchannon, each in his own proper person and by attorney, in open court appeared; and also came the jury of twelve good and lawful men, to wit: J. E. Watson, Volney Baker, H. H. Liles, R. Sansing, B. R. Shafer, B. J. Mattison, C. P. Worthy, W. M. Rone, D. W. Russell, A. L. Dickey, W. L. Smith, and J. J. Hammond, who having been heretofore duly examined, tried, impaneled, and sworn, as required by law, to try this cause, and having heretofore heard the plea of defendants and part of the evidence, now, on this day, the giving of evidence was resumed in open court, in presence of the jury and each of the defendants and their attorneys, and said evidence not being concluded at the hour of adjournment, the jury were duly continued and instructed by the court and placed in charge of a duly appointed and sworn bailiff for the night; and further hearing of this cause was postponed until to-morrow.

8 SATURDAY, *May 30th, 1896.*

Court was opened at 9 a. m., as per last adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, U. S. atty.; H. B. Birmingham, asst. U. S. atty.; John B. Dailey, asst. U. S. atty.; J. S. Williams, U. S. marshal, by his deputy, R. Herz, and C. Dart, clerk, by his deputy, Mel. Kirkpatrick.

Circuit court. Criminal docket.

UNITED STATES
vs. } No. 876.
C. L. ADDINGTON & T. D. BUCHANNON.

This cause coming on this day to be further heard, came the United States, by her attorney, and the defendants, C. L. Addington and T. D. Buchannon, each in his own proper person and by attorney, appeared in

open court; and also came the jury of twelve good and lawful men, to wit: J. E. Watson, Volney Baker, H. H. Liles, R. Sansing, B. R. Shafer, B. J. Mattison, C. P. Worthy, W. M. Rone, D. W. Russell, A. L. Dickey, W. L. Smith, and J. J. Hammond, who having been heretofore duly examined, tried, impaneled, and sworn, as required by law, to try this cause, and having heretofore heard the plea of the defendants and part of the evidence, now, on this day, the giving of evidence was resumed and duly concluded in open court in presence of the jury and each of the defendants and their counsel, and said evidence having been concluded as aforesaid, the argument of counsel was begun in open court in presence and hearing of the jury and the defendants and their counsel, and said argument not being concluded at the hour of adjournment, the jury were duly continued and instructed by the court and placed in charge of a duly appointed and sworn baliff; and further hearing of this cause was postponed until Monday next, or the reconvening of this court.

9 MONDAY, *June 1st, 1896.*

Court was opened at 10 a. m., as per last adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, H. B. Birmingham, ast. U. S. atty.; John B. Dailey, asst. U. S. atty.; J. S. Williams, U. S. marshal, by R. Herz, deputy, and C. Dart, clerk, by H. H. Kirkpatrick, his deputy.

Circuit court. Criminal docket.

THE UNITED STATES
vs. } No. 876.
C. L. ADDINGTON & T. D. BUCHANNON.

This cause coming on this day to be further heard, came the United States, by her attorney, and defendants C. L. Addington and T. D. Buchannon, each in his own proper person and by attorney appeared in open court, and also came the jury of twelve good and lawful men, to wit: J. E. Watson, Volney Baker, H. H. Liles, R. Sansing, B. R. Shafer, B. J. Matison, C. P. Worthey, W. M. Rone, D. W. Russell, A. L. Dickey, W. L. Smith, and J. J. Hammond, who, having been heretofore duly examined, tried, impaneled, and sworn as required by law to try this cause, and having heretofore heard the plea of the defendants, the evidence, and part of the arguments of counsel, now on this day in open court the argument of counsel was resumed in presence and hearing of the jury and the defendants and their counsel, and the argument being concluded the jury received the charge of the court and retired to consider of their verdict, and on this same day the jury came and returned into open court, and in the presence of each of the defendants and their counsel their verdict in words and figures as follows, to wit:

"We, the jury, find the defendant C. L. Addington guilty of murder in the Indian Territory as charged in this indictment, and we find T. D. Buchannon not guilty as charged in this indictment.

"RUFFIN SANSING, *Foreman.*

"JUNE 1ST, 1896."

10 It is therefore considered by the court that the defendant C. L. Addington is guilty of murder in the Indian Territory as charged in the indictment and as found by the jury, and it is ordered that he be remanded to the custody of the marshal and be by him committed to the Lamar County Jail to await the judgement and sentence of the court.

It is further considered by the court that the defendant T. D. Buchannon is not guilty of murder as charged in the indictment, and it is ordered that he be discharged and go hence without day.

11 In circuit court of the United States of America, in the eastern district of Texas, fifth circuit. April term, A. D. 1896.

THE UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

Now comes C. L. Addington, the defendant in the above styled and numbered cause, and asks the court to grant him a new trial in said cause for the following reasons, to-wit:

First. Because the verdict of the jury is contrary to the law and the testimony.

Second. Because the verdict of the jury is not supported by the evidence in this, that the said verdict finds the defendant guilty of murder when in truth and in fact there are no elements of malice or other ingredients of murder in the testimony such as authorize or justify the infliction of the extreme penalty of the law.

Third. Because the court erred in refusing to permit the defendant to show specific acts of the deceased Oscar Hodges, which acts were inconsistent with the testimony of certain Government witnesses that the reputation of said Hodges was that of a peaceable, law-abiding man.

OWNBY & JOHNSON, STURGEON & LEE,
Attys. for Defendant.

Endorsed on back as follows: No. 876. The United States vs. C. L. Addington et al. Motion for new trial. Filed June 3rd, 1896. C. Dart, Clerk. By A. D. Brooks, deputy.

12 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

Now comes C. L. Addington, one of the defendants in the above-styled and numbered cause, and, leave of court first had and obtained, files this his amended motion for a new trial, and asks that such new trial be granted for the following reasons, viz:

First. Because the verdict of the jury is contrary to the law and the testimony and is not supported by the evidence.

Second. Because there is nothing in the record of this case which shows such a killing as warrants the infliction of the extreme penalty of the law.

Third. Because the court erred in failing to give in its charge to the jury the statutory definition of manslaughter.

Fourth. Because the definition of manslaughter as given by the court to the jury in this case is vague and indefinite, and misleading, in that it charges the jury in effect that any intentional taking of human life without malice is manslaughter.

Fifth. Because the court erred in its charge to the jury on the law of self-defense, wherein it informed the jury that it was the duty of this defendant to avoid the threatened danger, if such existed, even though he had been unlawfully assaulted by Hodges, and even though said Hodges was doing acts indicating a present intention, coupled with the ability upon the part of said Hodges, to take the life of this defendant, or do him serious bodily harm.

Said charge is also erroneous in that it says in any such a state of case the defendant should use all reasonable means in his power to
13 avert the danger and only authorizes the taking of human life as a last resort.

Sixth. Because the court in its charge to the jury, in suggesting a state of case which would reduce the crime of defendant from murder to manslaughter, erred in instructing the jury that if they believed at the time that defendant killed Hodges, that the life of defendant was about to be taken by said Hodges, and that Hodges was then making demonstrations or doing acts that would arouse in the mind of defendant a state of frenzy or fear such as rendered him incapable of cool reflection, and on account of the acts of said Hodges the said defendant shot said Hodges, in that state of case the jury would find the defendant guilty of manslaughter and not guilty of murder, which charge is erroneous, because in the state of case suggested the defendant would be guilty of no crime, but would be excusable on the ground of self-defense.

Seventh. Because the court, in its application of the facts of this case to the law, charged the jury in effect that if the defendant Addington produced the occasion for assault upon the part of Hodges then he could not evoke the law of self-defense, which charge is erroneous, because in that event the defendant produced the occasion for the assault upon the part of Hodges his right of self-defense would in no way be abridged unless said assault was provoked by Addington for the purpose of giving said Addington an opportunity of taking the life of said Hodges or engaging in a deadly combat with him.

Eighth. Because, in further applying the facts in this case to the law of self-defense, the court erred in charging the jury that before such law could be invoked it must appear that the shot fired by Addington
14 which killed Hodges must have been fired in his own actual self defense, and the defendant did not go to the place of the killing for the purpose of provoking the difficulty for the purpose of killing Hodges, which charge is erroneous and prejudicial to this defendant, because if the jury believed that it reason'bly appeared to the defendant that his life was in danger, it was their duty to acquit him under the law, even though they thought there was no actual danger. Even though defendant may have provoked deceased, he would still have the right to defend himself against an unlawful attack upon the part of deceased, and, even though defendant went to the place of the killing to provoke a diffi-

culty, he would still have the right to defend himself unless he knowingly and intentionally did acts calculated to provoke a deadly combat with deceased and with the purpose of getting an excuse to kill the deceased.

Tenth. Because since the trial of said cause there has been discovered other and material and important testimony which was not and which could not have been produced on said trial, as the defendant was ignorant of the existence of the same, and which he could not have discovered by reasonable dilligence, which newly discovered evidence is attached to this motion, marked "Exhibit A," "B," & "C," and prayed to be taken as part of the same.

Wherefore, premises considered, the defendant prays the court to set aside the verdict of the jury convicting him of murder and grant him a new trial in this cause.

LEE, OWNBY & JOHNSON,
Attys. for Defendant.

15 EXHIBIT A.

STATE OF TEXAS, *Lamar County:*

Before me, the undersigned authority, on this day personally appeared George Flood, who, after being by me duly sworn, upon his oath deposes and says: That he is a citizen of Paris, Texas, and has resided here for a number of years, and that he is in the employ of the Red Store, in Paris, Texas, and that it is his business to look up trade and customers for said store. He says that a day or two before the trial of C. L. Addington in the Federal court upon a charge of murder he visited a wagon yard in the city of Paris, and there met two men by the names of Barr and Baker, who said they were here in Paris as Government witnesses in said cause. Deponent said the way he came to be in conversation with them was that he was looking for customers for said store, and saw that they were strangers in the city. He further says that he entered into conversation with them about said case, and among other things said during their meeting they told this affiant that they did not like defendant Addington; that they were going to know enough to break his neck, and that they had the mob to do it, and that they intended to do so—and just at this time a party unknown to this affiant came up where they were and the parties ceased talking about the case.

GEORGE FLOOD.

Sworn to and subscribed before me this 22nd day of June, A. D. 1896.
[SEAL.]

M. W. JOHNSON,
Notary Public, Lamar Co., Texas.

16 EXHIBIT B.

STATE OF ARKANSAS, *County of Little River:*

I, Geo. B. Jackson, do solemnly swear that a few days before Mr. C. L. Addington killed Oscar Hodge that I met Mr. Oscar Hodge in Winthrop, Arkansas, and in a conversation with said Hodge he said Addington thought they had settled their difference, but said, "I will tell

you, George, I will have my knife through him before he knows it." He said this with a flourish of his knife.

GEO. B. JACKSON.

Subscribed and sworn to before me this 20th day of June, 1896.
[SEAL.] J. A. SISSIONS,
Notary Public.

17 THE STATE OF TEXAS, *County of Bowie:*

Personally came before me, the undersigned authority, William Ohler, who, first by me being duly sworn, deposes and says that on the 28th day of June, 1895, I made a trade with Mr. C. L. Addington for beef cattle; said cattle were to be delivered to me on the 29th of June, 1895, at Winthrop, Arkansas. Mr. C. L. Addington told me at the time that we made the trade that he (Addington) had some cattle in the nation near Mr. Hodges, and if he went up there (in the nation) after the cattle it would make him later on the next morning in delivering the cattle.

W. J. OHLER.

Sworn to and subscribed before me this 23rd day of June, A. D. 1896.
[SEAL.] J. J. PETERS,
Justice of the Peace and ex officio Notary Public, Bowie Co., Texas.

18 STATE OF ARKANSAS, *County of Little River:*

I do hereby solemnly swear that on Monday after the killing of Oscar Hodges, in a conversation between myself and Nute Walker, he (Nute Walker) said that him and a negro was at the lot feeding the horses at the big trough in Hodge's lot when the shooting occurred, and that he did not see the shooting, and when he got to the house there was a dead man there.

J. R. MCKINNY.

Subscribed and sworn to before me this 23rd day of June, 1896.
[SEAL.] J. A. SISSIONS, *N. P.*

19 Following endorsements appear on back of foregoing papers: 876. United States, No. v. C. L. Addington et al. Amended motion for a new trial. Lee, Ownby & Johnson, attys. for defendant. Filed June 22nd, '96. C. Dart, clerk. By H. H. Kirkpatrick, deputy.

20 MONDAY, *June 29th, 1896.*

Court met pursuant to adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, U. S. attorney, and his assistants; J. S. Williams, U. S. marshal, and C. Dart, clerk, by H. H. Kirkpatrick, deputy.

THE UNITED STATES }
vs.
C. L. ADDINGTON. }

This day this cause came on to be heard upon the motion of defendant

for a new trial herein, and argument of counsel thereon having been heard the same was taken under advisement by the court.

Court adjourned until 9 a. m. to-morrow.

TUESDAY, *June 30th, 1896.*

Court met pursuant to adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliferro, U. S. attorney, and his assistants; J. S. Williams, U. S. marshal, and C. Dart, clerk, by H. H. Kirkpatrick, deputy.

THE UNITED STATES
vs.
C. L. ADDINGTON.

The motion of the defendant for a new trial herein argued and submitted on yesterday having been duly considered by the court because it is the opinion of the court that the law is against the defendant, the motion is overruled, to which ruling of the court defendant then and there excepted.

21 THE UNITED STATES
vs.
C. L. ADDINGTON.

Upon the motion of S. Taliaferro, esq., attorney of the United States for the eastern district of Texas, the above-named defendant, C. L. Addington, was this day brought to the bar of the court in custody of the marshal and, being represented by counsel, was asked by the court, in open court, if he had anything to say why the judgement and sentence of the court should not be pronounced upon him in accordance with the verdict of guilty returned by the jury in this case on the first day of June, 1896, and the law in such cases made and provided; and no good cause being shown why the judgement and sentence of the court should not be pronounced herein, it is therefore considered by the court that the defendant, C. L. Addington, is guilty of murder as charged in the indictment, and as found by the jury, and it is ordered, adjudged, and decreed by the court that the defendant, C. L. Addington, be now remanded to the custody of the marshal of the United States for the eastern district of Texas, and be by him committed to the jail of Lamar County and there be kept securely confined until Friday, the fourth day of September, A. D. 1896, when, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, he, the said C. L. Addington, shall be taken therefrom by the marshal aforesaid to the yard of the said jail and there be by the marshal aforesaid hanged by the neck until he, the said C. L. Addington, is dead.

And the clerk of this court is ordered to issue a death warrant directed to the marshal aforesaid commanding the due execution of this judgement and sentence according to law.

22 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

To the Hon. DAVID E. BRYANT,
Judge of said Court:

Comes now C. L. Addington, defendant in the above styled and numbered cause, and files this, his motion in arrest of judgement rendered herein, and says that the said court has no jurisdiction to try said Addington under the bill of indictment filed in said court against him for the following reasons, viz:

First. Because said indictment alleges that the said crime of murder was committed in the Choctaw Nation, I. T., and nowhere alleges the fact to be that said C. L. Addington was a noncitizen of said Indian Territory.

Second. Because said bill of indictment alleges that the Choctaw Nation, Ind. Ter., the place where said crime is alleged to have been committed, was under the exclusive jurisdiction of the United States when there was no evidence offered to sustain said charge, and in truth and in fact the United States did not have exclusive jurisdiction over the Territory where the crime is alleged to have been committed.

Third. Because the verdict of the jury rendered in said cause, in words and figures as follows, viz:

"We, the jury, find C. L. Addington guilty of murder in the Indian Territory, as charged in this indictment, and we find T. D. Buchanon not guilty as charged in this indictment.

"June 1st, 1896.

"RUFFIN SANSING, *Foreman.*"

Which said verdict fails to find that the defendant C. L. Addington, or the deceased, Oscar Hodges, or either of them, were noncitizens
23 of the Indian Territory.

Wherefore this defendant asks that this motion in arrest of judgement be granted for the reasons assigned, and that the judgement rendered herein be held for nought.

LEE, OWNBY & JOHNSON,
Attorneys for Defendant.

Endorsed as follows: Motion in arrest of judgement. United States, No. 876, vs. C. L. Addington et al. Attorneys for defendant, Lee, Ownby & Johnson. Filed July 4th, 1896. C. Dart, clerk. By H. H. Kirkpatrick, deputy.

In the circuit court of the United States of America for the eastern district of Texas. April term, 1896.

THE UNITED STATES
vs. No. 876.
C. L. ADDINGTON ET AL.

To the Honorable DAVID E. BRYANT,
Judge of said Court:

Now comes the United States, by and through its attorney, S. Taliaferro, and moves the court to strike out and hold for nought the motion in arrest of judgement filed herein.

First. Because said motion comes too late, in that C. L. Addington was duly and legally sentenced on the 30th day of June, 1896, and the motion and arrest of judgement was not filed until the fourth day of July thereafter.

Wherefore plaintiff prays that said motion be set aside and held for nought.

S. TALIAFERRO,
U. S. Attorney.

24 The following endorsements appear on back of said motion to strike out motion in arrest of judgement: United States vs. C. L. Addington. Motion to strike out motion in arrest of judgement. Filed July 10th, 1896. C. Dart, clerk. By H. H. Kirkpatrick, deputy.

25 FRIDAY, *July 10th, 1896.*

Court met pursuant to adjournment. Present and presiding, Hon. D. E. Bryant, judge; also present, S. Taliaferro, U. S. attorney, and his assistants, John B. Dailey and H. B. Birmingham; J. S. Williams, U. S. marshal, and C. Dart, clerk, by H. H. Kirkpatrick, deputy.

THE UNITED STATES
vs. 876.
C. L. ADDINGTON.

This day this cause coming on to be heard upon the defendant's motion in arrest of judgement herein, and argument of counsel thereon being heard and the court fully advised in the premises, because the bill of indictment alleges that deceased, Oscar Hodges, was a white man and not a citizen of the Indian Territory, and the proof showed that both defendant, C. L. Addington, and deceased, Oscar Hodges, were white men, and not citizens of the Indian Territory, the court is of the opinion that the law is against the defendant. The motion is overruled, to which ruling of the court the defendant excepted in open court.

26 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

Bill of exceptions No. 1.

Be it remembered that upon the trial of the above-styled and numbered cause in the said court the following proceedings were had:

Came the defendant, by his attorneys, on the 22nd day of June, A. D. 1896, and after the verdict of the jury convicting the said defendant had been rendered therein, and filed with the clerk of said court his amended motion for a new trial in said cause, the same being as follows, viz (see pages 12 to 19, inclusive, of this record), and upon the hearing of said motion by the said court, on the 30th day of June, A. D. 1896, the same being a day of the term of the said court at which said trial was had, the said motion was on said day overruled by the said court, to which action of the said court, the overruling of said motion, and to all matters and things herein set out, the defendant, in person and by attorney, excepted in open court, and now tenders this his bill of exceptions and asks that the same be signed and approved by the court, which is accordingly done.

D. E. BRYANT,
Judge Presiding at the Trial of said Cause.

27 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

Bill of exceptions No. 2.

Be it remembered that upon the trial of the above-styled and numbered cause in the said court the following proceedings were had: The defendant C. L. Addington was indicted by the grand jury of said court at Paris, Texas, for having, on the 28th day of June, A. D. 1895, in Red River County, Choctaw Nation, I. T., killed and murdered one Oscar Hodges by shooting him with a gun, and upon the trial of said Addington by said court on the day of , A. D. 1896, on the said charge, the court charged the jury as follows, viz: "Manslaughter as applied to a case of this character is the intentional taking of human life, but the distinguishing trait between manslaughter and murder is the absence of malice. It must spring from a gross provocation and of such a character as to temporarily render the party incapable of that cool reflection that otherwise makes it murder. Of course, the party intends to do what he does, but he must be laboring at the time he performs the act under great

mental excitement, springing from some gross provocation such as would render an ordinarily prudent person for the time being incapable of that cool reflection that otherwise makes it murder In that state of case the law does not wholly excuse the offense, but the law, in its charity for the imperfections and weaknesses of human nature, reduces it from murder to manslaughter."

Be it further remembered that the court also in its charge to the jury on the trial of the said cause charged the jury on the law of self-
28 defense as follows, viz: "A homicide becomes justifiable when the party that is charged with taking human life has been unlawfully assailed himself by his adversary, and is placed in a position of peril where his life is about to be taken or serious bodily harm is about to be done to him, or from the acts of his adversary it indicates to the mind of the defendant, and would reasonably indicate to the mind of any other person situated as the defendant was, an intention, coupled with the ability, upon the part of his adversary to take his life or do him serious bodily harm. In that state of case it is his duty to avoid the threatened danger if he can, but he is authorized to use all reasonable means at his command to avert the threatened danger, and, if necessary, he is authorized to go to the extent of taking human life in his own proper self-defense."

Be it further remembered that the court also in its said charge to the jury on the trial of the said cause charged the jury as follows on manslaughter, viz: "If you believe from the evidence that the defendant Addington did take the life of said Hodges, and about that there is no contention—the defendant testified to it himself—but you believe that at that time his life was not about to be taken by said Hodges, and you believe that Hodges then was making demonstrations or doing acts that would arouse in the mind of Addington a state of frenzy or fear such as rendered him incapable of cool reflection, and on account of the acts of said Hodges the said Addington shot him, in that state of case you will find him guilty of manslaughter, and not guilty of murder. Or if you believe that he is guilty of murder or manslaughter, and are doubtful which it is, in that state of case you will solve the doubt in his favor and find in favor of the lower degree instead of the higher degree."

29 Be it also further remembered that the court, in its said charge to the jury on the trial of the said cause, charged the jury as follows, viz: "Or, if you believe from the testimony that said Addington was attacked by said Hodges without having produced the occasion for the assault, and that the acts of said Hodges then showed to the mind of Mr. Addington, situated as he was, a present intention upon the part of Hodges either to take his life or do him serious bodily harm, or that it would have produced that impression upon the mind of any reasonably prudent person situated as Addington was that Hodges was then about to kill him or do him serious bodily harm, and you further believe that the means he used were the only reasonable means at his command to avert the threatened danger, and that he only fired in his own actual self-defense, not actuated by malice, and did not go there for the purpose of killing Hodges, you will find the defendant not guilty as charged in this indictment."

To which action of the court in giving such charges to the jury the defendant now tenders this, his bill of exceptions, and asks that the same be signed and approved by the court, which is accordingly done.

This bill of exceptions No. 2 is allowed, with the following explanation: The above charges, with other instructions, were given to the jury. The defendant nor his attorneys at any time during the trial excepted to any portion or part of the charge, nor before the verdict was rendered, and the first time any exceptions were made by defendant or his attorneys to the charges was made in defendant's motion for a new trial.

D. E. BRYANT,
Judge Presiding at the Trial of said Cause.

30 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

THE UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

Bill of exceptions No. 3.

Be it remembered that upon the trial of the above styled and numbered cause in the said court, the following proceedings were had:

Came the defendant, by his attorneys, on the 4th day of July, A. D. 1896, and after the verdict of the jury convicting the said defendant had been rendered therein, and filed with the clerk of said court his motion in arrest of judgement, the same being as follows, viz (see pages 22 to 23, inclusive, and pages 2 to 4, inclusive, of this record), and upon the hearing of the said motion by the said court on the 10th day of July, A. D. 1896, the same being a day of the term of said court at which said trial was had, the said motion was on said day overruled by the said court, to which action of the court, overruling the said motion, the defendant in person and by his attorneys excepted in open court, and now tenders this, his bill of exceptions, and asks that the same be signed and approved by the court, which is accordingly done.

This bill of exceptions No. 3 is allowed, with the following explanation: The indictment charges that the deceased, Oscar Hodges, was a white person and a noncitizen of the Indian Territory, and the proof showed that both the deceased and the defendant C. L. Addington were both white persons and noncitizens of the Indian Territory.

D. E. BRYANT,
Judge Presiding at Trial of said Cause.

Endorsed on back as follows: United States, No. 876, vs. C. L. Addington et al. Bills of exception. , attorneys for defendant. Filed July 10, 1896. C. Dart, clerk. By Mel. Kirkpatrick, deputy.

31 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

UNITED STATES
vs.
C. L. ADDINGTON ET AL. } No. 876.

To the Hon. DAVID E. BRYANT,
Judge of said Court:

Now comes C. L. Addington, the defendant herein, and desiring to have the above styled and numbered cause reexamined, reversed, or

affirmed by the Supreme Court, U. S. A., upon a writ of error, hereby asks that the said writ of error be set out and granted in accordance with the statutes in such cases made and provided.

LEE, OWNBY & JOHNSON,
Attorneys for Defendant.

Allowed this July 10th, A. D. 1896.

D. E. BRYANT,
U. S. Dist. Judge, Eastern Dist. Texas.

(Endorsed:) United States, No. 876, vs. C. L. Addington et al. Petition for issuance writ of error. Filed July 10, 1896. C. Dart, clerk. By Mel. Kirkpatrick, deputy.

32 In circuit court, U. S. A., eastern district of Texas. April term, A. D. 1896.

UNITED STATES
vs. } No. 876.
C. L. ADDINGTON ET AL.

And now on the day of A. D. 1896, and before the adjournment of the April term of said court, at which this defendant was tried and convicted, the defendant C. L. Addington now comes in the above styled and numbered cause and files this, his assignment of error, and says that on the trial of the said cause in the said trial court there were numerous and manifest errors committed, to the prejudice of defendant, which said errors were duly complained of by the said defendant, and are manifest on the record of this cause, and are as follows:

First. The court erred in overruling defendant's amended motion for a new trial.

Second. Because the court erred in overruling the first ground assigned in the said motion for a new trial, viz: That the verdict of the jury was contrary to the law and the testimony, and was not supported by the evidence.

Third. Because the court erred in overruling the second ground assigned in said motion for a new trial, viz: That there is nothing in the records of this case that shows such a killing that warrants the infliction of the extreme penalty of the law.

Fourth. Because the court erred in overruling the third ground assigned in the motion for a new trial, viz: In failing to give in its charge to the jury the statutory definition of manslaughter.

Fifth. Because the court erred in overruling the fourth ground assigned for a new trial in said motion, viz: Because the definition of man-
33 slaughter as given by the court to the jury in this case is vague and indefinite and misleading, in that it charges the jury in effect that any intentional taking of human life without malice is manslaughter.

Sixth. Because the court erred in overruling the fifth ground assigned for a new trial in said motion, viz: "Because the court erred in its charge to the jury on the law of self-defense, wherein it informed the jury that it was the duty of this defendant to avoid the threatened danger, if such existed, even though he had been unlawfully assaulted by Hodges, and even though said Hodges was doing acts indicating a present intention,

coupled with the ability, upon the part of said Hodges to take the life of this defendant, or to do serious bodily injury. Said charge is also erroneous in that it says that in any such a state of case the defendant should use all reasonable means in his power to avert the danger, and only authorizes the taking of human life as a last resort."

Seventh. Because the court erred in overruling the sixth ground assigned in said motion for a new trial, viz: "Because the court in its charge to the jury, in suggesting a state of case which would reduce the crime of defendant from murder to manslaughter, erred in instructing said jury that if they believed at the time the defendant killed Hodges that the life of defendant was not about to be taken by said Hodges, and that Hodges was then making demonstrations or doing acts that would arouse in the mind of defendant a state of frenzy or fear such as rendered him incapable of cool reflection, and, on account of the acts of Hodges the said defendant shot said Hodges, in that state of case the jury would find the defendant guilty of manslaughter and not guilty of murder, which charge is erroneous, because in the state of case suggested the
34 defendant would be guilty of no crime, but would be excusable on the ground of self defense."

Eighth. Because the court erred in overruling the seventh ground assigned in said motion for a new trial, viz: "Because the court erred in its application of the facts of this case to the law, and charged the jury in effect that if the defendant Addington produced the occasion for assault upon the part of Hodges, then he could not invoke the law of self-defense, which charge is erroneous, because in that event had the defendant produced the occasion for the assault upon the part of Hodges, his right of self-defense would in no way be abridged unless said assault was provoked by Addington for the purpose of giving said Addington an opportunity of taking the life of said *said* Hodges by engaging in a deadly combat with him."

Ninth. Because the court erred in overruling the eighth ground assigned in said motion for a new trial, viz: "Because the court, in further applying the facts in this case to the law of self-defense, erred in charging the jury that before such law could be invoked it must appear that the shot fired by Addington which killed Hodges must have been fired in his own self-defense, and that the defendant did not go to the place of the killing for the purpose of provoking a difficulty for the purpose of killing Hodges, which charge is erroneous and prejudicial to this defendant, because if the jury believed that it reasonably appeared to the defendant that his life was in danger it was their duty to acquit him under the law, even though they thought there was no actual danger; even though defendant may have provoked deceased, he would still have the right to defend himself against an unlawful attack upon the part of deceased; and even though the defendant went to the place of the killing to provoke a difficulty he would still have the right to defend
35 himself, unless he knowingly and intentionally did acts calculated to provoke a deadly combat with deceased and with the purpose of getting an excuse to kill deceased."

Tenth. Because the court erred in overruling the ninth ground assigned in said motion for a new trial, viz: "Because since the trial of said cause

here has been other material and important testimony discovered, which was not and which could not have been produced on said trial, as defendant was ignorant of the existence of the same, and which he could not have discovered by reasonable diligence, which newly discovered testimony is attached to this motion, marked Exhibit 'A,' 'B,' and 'C,' and prayed to be taken as a part of the same." (See said motion for the affidavit of George Flood, George B. Jackson, William Ohler, and J. R. McKinney.)

Eleventh. Because the court erred in said charge in instructing the jury on manslaughter, as follows, viz: "Manslaughter, as applied to a case of this character, is the intentional taking of human life, but the distinguishing trait between manslaughter and murder is the absence of malice; it must spring from a gross provocation, and of such character as to temporarily render the party incapable of that cool reflection that otherwise makes it murder. Of course, the defendant intends to do what he does, but he must be laboring at the time he performs the act under intense mental excitement such as would render any ordinarily prudent person for the time being incapable of that cool reflection that otherwise makes it murder. In that state of case the law does not wholly excuse the offense; but the law, in its charity for the imperfections and weakness of human nature, reduces it from murder to manslaughter." The said charge is erroneous in that, under the definition of manslaughter as given, the defendant might not be guilty of the crime of manslaughter and might be excusable on the ground of self-defense.

36 Twelfth. Because the court erred in its charge to the jury on the law of self-defense as follows viz: "The homicide becomes justifiable when the party that is charged with taking human life has been unlawfully assaulted himself by his adversary, and is placed in a position of peril where his life is about to be taken, or serious bodily harm is about to be done him, or, from the acts of his adversary, it reasonably indicates to the defendant, or would reasonably indicate to the mind of any other person situated as the defendant was, an intention, coupled with the ability, upon the part of his adversary, to take his life or do him serious bodily harm; in that state of the case it is his duty to avoid the threatened danger if he can, but he is authorized to use all reasonable means at his command to avert the threatened danger, and, if necessary, he is authorized to go to the extent of taking human life in his own proper self-defense," which charge is assigned as error, because it imposes upon the defendant when unlawfully assaulted the duty of retreating or avoiding by all other reasonable means at his command the necessity of taking human life before he can invoke the right of self-defense.

Thirteenth. Because the court erred in its charge in its application of the facts of this case to the law wherein he charged the jury as follows: "If you believe from the testimony that the said Addington was attacked by said Hodges without having produced the occasion for the assault, and that the acts of Hodges then showed to the mind of Mr. Addington, situated as he was, a present intention upon the part of Hodges either to take his life or do him serious bodily harm, or that it would have produced that impression upon the mind of any reasonably prudent

person situated as Addington was that Hodges was then about to
37 kill him or do him serious bodily harm, and you further believe that the means he used were the only reasonable means at his command to avert the threatened danger, and that he only fired in his own actual self-defense, not actuated by malice, and did not go there for the purpose of provoking this difficulty for the purpose of killing Hodges, you will find the defendant not guilty as charged in this indictment," which charge is assigned as error, because it limits the right of Addington to act in his own self-defense only in case of actual danger and not in apparent danger; and it is assigned as error for the further reason that the said charge requires the defendant Addington to resort to every reasonable means at his command to avert the threatened danger before he was authorized to fire in his own self-defense; and it is assigned as error for the further reason that it denies the defendant Addington the right of self-defense if Addington himself produced the occasion for the assault.

Fourteenth. Because the court erred in overruling the defendant's motion in arrest of judgement.

LEE, OWNBY & JOHNSON,
Attys. for Defendant.

Endorsed as follows: United States vs. C. L. Addington et al. No. 876. Assignment of error. Attorneys for defend't. Filed July 10, 1896. C. Dart, clerk. By Mel. Kirkpatrick, deputy.

38 United States of America to S. Taliaferro, U. S. atty. for the eastern district of Texas, greeting:

You are hereby cited and admonished to appear at a session of the Supreme Court of the United States, to be holden at Washington, D. C., within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the U. S. for the eastern district of Texas for the 5th circuit, sitting at Paris, Texas, wherein C. L. Addington is plaintiff in error and the United States is defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be reexamined and reversed, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of said Supreme Court of the United States, this 10th day of July, A. D. 1896.

D. E. BRYANT,
U. S. Dist. Judge in and for E. Dist. Texas.

(Endorsed as follows:) United States vs. C. L. Addington. No. 876. Citation in error. Filed July 10, 1896. C. Dart, clerk. By Mel. Kirkpatrick, deputy.

(Further endorsed:) On this sixth day of August, in the year of our Lord eighteen hundred and ninety-six, personally appeared B. K. Brockington before me, the subscribed, deputy marshal of the United States for the eastern district of Texas, and makes oath that he delivered a true copy of the within citation to John B. Dailey, assistant attorney of the United States for the eastern district of Texas, at Paris, in the eastern

district of Texas, on the sixth day of August, 1896. B. K. Brockington. Sworn to and subscribed the sixth day of August, A. D. 1896. C. Dart, clerk U. S. circuit court, eastern district of Texas. By Mel. Kirkpatrick, deputy.

39 I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, hereby certify that the foregoing 38 pages contain a true copy of the record, and of the assignment of errors, and of all proceedings in the case of The United States vs. C. L. Addington et al., numbered 876 on the criminal docket of said court, at Paris, Texas, as the same now appears on file and of record in my office, at Paris, this sixth day of August, 1896.

Witness my hand this sixth day of August, 1896.

[SEAL.] C. DART, *Clerk.*
By MEL. KIRKPATRICK, *Deputy.*

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States of America, plaintiff, and C. L. Addington, defendant, a manifest error hath happened, to the great damage of the said C. L. Addington, defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington, D. C., within 30 days from the date hereof, in the said United States Supreme Court, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 10 day of July, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] C. DART,
Clerk of the Circuit Court of the United States
for the Eastern District of Texas.
By H. H. KIRKPATRICK, *Deputy.*

Allowed July 10th, 1896, by

D. E. BRYANT,
Judge Presiding at said Trial.

41 (Indorsed:) No. 876. Criminal docket. United States circuit court, eastern district of Texas. At Paris, Texas. The United States vs. C. L. Addington. Writ of error. Filed July 10th, 1896. C. Dart, clerk. By H. H. Kirkpatrick, deputy.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, hereby certify that I received this writ on the 10 day of July, 1896, and that on this 6th day of August, 1896, I have transmitted to the clerk of the United States Supreme Court, at Washington, D. C., a true copy of the record and proceedings in the within named cause, duly certified under my hand and seal.

Witness my hand and the seal of said court at my office in the city of Paris, the day and date last above named.

[SEAL.] C. DART, *Clerk.*
By MEL. KIRKPATRICK, *Deputy.*

(Indorsement on cover:) Case No. 16358. Term No., 579. C. L. Addington, plaintiff in error, vs. The United States. E. Texas, C. C. U. S. Filed August 11, 1896.

165-184

Supreme Court U. S.
FILED.
OCT 6 1896
JAMES H. MCKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

C. L. ADDINGTON, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 579.

MOTION TO ADVANCE.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

C. L. ADDINGTON, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 579.

MOTION TO ADVANCE.

The plaintiff in error was indicted with one T. D. Buchannon in the circuit court of the United States for the eastern district of Texas at the November term, 1895, for the murder of one Oscar Hodges on June 28, 1895, in the Red River country, in the Choctaw Nation, in the Indian Territory. He was tried, and on June 1, 1896, found guilty (Buchannon being acquitted), and sentenced to be hanged.

The Solicitor-General respectfully moves the court to advance the case on the docket and set it down for hearing on a day convenient to the court during the present term.

Notice of this motion has been served on the plaintiff in error and his counsel in the court below, and proof of service filed with the clerk.

HOLMES CONRAD,
Solicitor-General.

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